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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re Simon S. Chan,
SSN xxx xx 7191,

Debtor.

CHAPTER 7

CASE NO. 18-40217 CN 7

ADV. NO. 18-04060

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

Scott Frazer, Alan Miller, William Chan,
Michelle Chan, Jeff Chang, Tomas Velken
and Julie Lam

Plaintiffs

v.

Simon S. Chan,
Defendant.

Date: May 6, 2019
Time: 10:00 a.m.
Dept: 215

Table of Contents

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	1
III.	ARGUMENT	5
A.	Issue preclusion (collateral estoppel) prevents reconsideration of the issues decided by the State Court and conclusively establishes the validity of Plaintiffs' claims in this action and bars Defendant's motion for summary judgment.....	5
B.	California's law of collateral estoppel applies in this case to give issue preclusive effect to the State Court Judgment, establishing the elements of the Plaintiffs' nondischargeability claims.....	5
C.	The elements of the Plaintiffs' § 523(a)(2)(A) claim are all decided in the State Court Judgment	7
D.	The elements of the Plaintiffs' § 523(a)(6) claim are also decided in the State Court Judgment because it awards punitive damages for fraud.....	9
E.	This Court may not sidestep collateral estoppel by reviewing the issues conclusively decided by the final State Court judgment as though it were a court of appeal.....	10
F.	Defendant's motion is not a motion for summary judgment because it asks the Court to adjudicate matters which were disputed in the State Court trial.....	11
IV.	CONCLUSION	11

Table of Authorites

Cases

<i>Atlantic Coast Line R. Co. v. Locomotive Engineers</i> , 90 S. Ct. 1739 (1970)	12
<i>Barker v. Hull</i> , 191 Cal.App.3d 221, 226 (1987).....	7
<i>Bugna v. McArthur (In re Bugna)</i> , 33 F.3d 1054 (9 th Cir.1994).....	5
<i>Clark v. Bear Stearns & Co., Inc.</i> , 966 F.2d 1318 (9 th Cir.1992);.....	6
<i>District of Columbia Court of Appeals v. Feldman</i> , 103 S. Ct. 1303 (1983).....	12
<i>Gallenkamp v. Superior Court</i> , 221 Cal.App.3d (1990).....	7
<i>Grogan v. Garner</i> , 498 U.S. 279 (1991)	5
<i>In re Bammer</i> , 131 F.3d 788 (9 th Cir.1997)	10
<i>In re Cecchini</i> , 780 F.2d 1440 (9 th Cir.1986).....	10
<i>In re Diamond</i> , 285 F.3d 822 (9 th Cir.2002)	8
<i>In re Franklin</i> , 179 B.R. 913 (Bankr. E.D. Cal. 1995)	8
<i>In re Jogert, Inc.</i> , 950 F.2d 1498 (9 th Cir.1991).....	8
<i>In re Khaligh</i> , 338 B.R. 817, 832 (9 th Cir. BAP 2006)	5
<i>In re Molina</i> , 228 B.R. 248 (B.A.P. 9th Cir. 1998)	10
<i>Lucido v. Superior Court</i> , 51 Cal.3d 335 (1990)	6
<i>Marrese v. Am. Academy of Orthopaedic Surgeons</i> , 470 U.S. 373 (1985)	6
<i>Migra v. Warren City School Dist. Bd. of Educ.</i> , 465 U.S. 75(1984).....	5
<i>Mueller v. J. C. Penney Co.</i> 173 Cal.App.3d 713 (1985)	7
<i>Nourbakhsh</i> , 67 F.3d , 798 (9 th Cir. 1995).....	6
<i>Rooker v. Fidelity Trust Co.</i> , 263 U.S. 413 (1923)	12
<i>Stewart v. Ragland</i> , 934 F.2d 1033 (9 th Cir.1991).....	8
<i>Todhunter v. Smith</i> , 219 C. 690 (1934).....	7
<i>Worldwide Church of God v. McNair</i> , 805 F.2d 888 (9th Cir. 1986).....	12
<i>Younie v. Gonya (In re Younie)</i> , 211 B.R. 367 (9th Cir. BAP 1997).....	9

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Statutes

28 U.S.C. § 1738 6

Cal.Civ.Code § 3294 11

Other Authorities

9 Witkin Sum. Cal. Law Torts § 772 3, 9

Fed. R. Civ. P. 56 1

Rest.2d Judgments, § 27 7

1 **I. INTRODUCTION**

2 The Court must deny defendant's motion for summary judgment because it is barred by the
3 doctrine of collateral estoppel (also known as issue preclusion). Indeed, Defendant's motion asks
4 the Court to reconsider the very issues which the Contra Costa County Superior Court adjudicated
5 in its now-final judgment in the state-court action between the parties and which have collateral
6 estoppel effect in this case. The Court, of course cannot reconsider those issues, and Defendant is
7 barred from relitigating them.

8 Defendant also argues that the Court can disregard the doctrine of issue preclusion and
9 review the state court judgment and its rulings as a court of appeal. That, too, this Court cannot
10 do. There are no exceptions to the applicability of collateral estoppel to this case. Moreover, this
11 Court does not have the authority to re-examine the final rulings of a state court.

12 Finally, Defendant's motion must be denied because it is not a motion for summary
13 judgment at all. A summary judgment motion asks the court to determine that there is "no
14 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."
15 Fed. R. Civ. P. 56. Defendant's motion, instead, asks the Court try the case on his papers and rule
16 on disputed evidence from trial which Defendant has selectively chosen in support of his motion.
17 Of course, there is no basis for the Court to do so, and, more importantly, because the motion is
18 based on disputed evidence, it must be denied.

19 In short, Defendant's motion is barred by collateral estoppel, asks the Court for relief which
20 it cannot grant, and is not a valid motion for summary judgment. As a result, the Court must deny
21 Defendant's motion.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 Defendant Chan was the driving force behind an investment scheme which defrauded the
24 Plaintiffs of hundreds of thousands of dollars. Request for Judicial Notice ["RJN"] Exh. 1
25 (Statement of Decision ["SD"] at 1:19-2:1). As a result of that scheme, and due to Defendant's
26 incompetence and dishonesty, instead of participating in the purchase, lease and sale of two
27 multi-unit condominium buildings in Beijing, China, as Defendant represented they would, the
28

1 Plaintiffs were left with two empty, partially finished units in a near-vacant high-rise building in
2 Beijing which are held in Defendant's name. *Id.*

3 Defendant was the only promoter of this scheme with any business experience in China,
4 and was held out to investors as a Manager of the LLCs set up to carry out the investments. SD at
5 2:15-18. The PPM identified Chan as the Manager, indicated that Management had extensive
6 experience in the investment real estate market in China, and stated that Defendant Chan had
7 been successfully developing real estate opportunities in China. RJN Exh. 1 (SD at 2:26-3:8).
8 None of this was true. RJN Exh. 1 (SD at 3:10).

9 Chan received funds from Plaintiffs, but he never provided an accounting or any records
10 reflecting disbursements from these funds. RJN Exh. 1 (SD at 5:11-25; 6:1-7). Instead, Defendant
11 deposited the funds into his personal bank accounts, and placed title to the units into his own
12 name. RJN Exh. 1 (SD at 5:7-8; 6:5-7). Defendant kept all of this concealed from Plaintiffs, even
13 when they met with him to get information about their investments, until well after they filed
14 litigation against him. RJN Exh. 1 (SD at 5:8-9; 7:7-16). Instead, he made misrepresentations to
15 them about the status of the investment, and its prospects. *Id.* After the death of another promoter
16 of the investment scheme and Plaintiffs gained access to his records, they learned for the first
17 time that their investment funds had been forwarded to Defendant's personal accounts in China,
18 and they filed suit in the California Superior Court. RJN Exh. 1 (SD at 7:26-8:3). That action,
19 *Frazer et al. v. Chan*, Contra Costa County Superior Court case no. CIVMSC-14- 00633 (the
20 "State Court Case"), was tried to the court in July, 2017.

21 At the conclusion of the trial, the court in the State Court Case ruled on the following
22 causes of action stated in Plaintiffs' second amended complaint: intentional fraud and deceit (first
23 cause of action), negligent misrepresentation (second cause of action), breach of fiduciary duty
24 (fourth cause of action), unfair business practice (fifth cause of action) and unjust enrichment
25 (sixth cause of action). The court concluded that "Plaintiffs are entitled to recover under each of
26 these legal theories except for the second cause of action."¹ RJN Exh. 1 (SD at 8:7-12). The court

27 ¹ Plaintiffs request that the Court take judicial notice of the state court judgment and statement of
28 decision pursuant to FRE 201.

1 also found against Defendant on the claims in his cross-complaint. RJN Exh. 1 (SD at 15:20-16:2;
2 16:19-21; 16: 22-17:2; 17:4-7).

3 The Superior Court supported its ruling on Plaintiffs' cause of action with a lengthy
4 Statement of Decision. The Statement of Decision explained the court's finding on Plaintiffs'
5 cause of action for Intentional Fraud and Deceit as follows:

6 Intentional Fraud and Deceit

7 The elements of fraud are "(a) misrepresentation (false
8 representation, concealment, or nondisclosure); (b) knowledge of
9 falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance;
10 (d) justifiable reliance; and (e) resulting damage." 9 Witkin Sum.
11 Cal. Law Torts § 772. "It is not essential to liability for fraud that
12 the person charged should have received any benefit." Ibid.

13 All of the elements of fraud are present in this case. Defendant
14 Chan knowingly misrepresented his background and experience in
15 developing and managing Chinese real estate in the PPM. He did
16 this to induce Plaintiffs' reliance on his expertise so that they would
17 invest in Dragonwood. Plaintiffs' reliance was actual and justified.
18 They have also suffered resulting damage through the loss of the
19 money they invested. Defendant Chan's fraudulent conduct and
20 intentional concealment also occurred with respect to the
21 commingling of funds detailed above. The Dragonwood Operating
22 Agreement represented that the funds invested with the company
23 would not be commingled with the manager's personal assets and
24 that the funds and assets of the company would not be employed in
25 any manner except for the exclusive benefit of the company. These
26 representations were also knowingly false as evidenced by
27 Defendant Chan's commingling of investor funds with his personal
28 accounts and his holding title to the units in his name and his wife's
name, both of which occurred almost immediately after the
Plaintiffs made their investment. Evidence of his fraudulent intent
is also clear in his destruction of all written records regarding the
purchase and build-out of the units, as well as his failure to disclose
that he had left the company in 2008 and moved back to the United
States, thereby essentially abandoning these investment properties.

22 RJN Exh. 1 (SD at 8:14-9:15). The superior court awarded Plaintiffs the following relief:

23 Julie Lam: \$212,500 investment plus \$160,609 interest. Total
24 \$373,109.

25 Scott Frazer: \$150,000 investment plus \$113,371 interest. Total
26 \$263,371.

27 Jeff Chang: \$75,000 investment plus \$56,685 interest. Total
28 \$131,686.

Bill & Michelle Chan: \$75,000 investment plus \$56,685 interest.
Total \$131,686.

1 Tom Velken: \$75,000 investment plus \$56,685 interest. Total
2 \$131,686.

3 Alan Miller: \$75,000 investment plus \$56,685 interest. Total
4 \$131,686.

5 RJN Exh. 1 (SD at 14:5-10). The superior court also imposed a constructive trust over
6 Defendant's interest in the properties in China (RJN Exh. 1 (SD at 14:12-13)) and found Plaintiffs
7 to be entitled to punitive damages. RJN Exh. 1 (SD 17:17-18).

8 After the court in the State Court Case issued its Statement of Decision, Defendant
9 commenced this bankruptcy proceeding. Plaintiffs sought and obtained relief from the automatic
10 stay to procure a monetary judgment in the State Case, including punitive damages as set forth in
11 a stipulation between Plaintiffs and the Chapter 7 Trustee. RJN Exh. 2 (Stipulation for Entry of
12 Judgment); and RJN Exh. 3 (Order for Relief from Stay). Following entry of the order for relief
13 from stay, and based on the stipulation between Plaintiffs and the Chapter 7 Trustee, the superior
14 court entered judgment (the "State Court Judgment") in favor of Plaintiffs and against Defendant
15 awarding Plaintiffs compensatory and punitive damages. RJN Exh. 4 (Judgment of the Contra
16 Costa County Superior Court).

17 Plaintiffs also filed this adversary action, in which they assert 11 U.S.C.A. §§ 523(a)(2)(A)
18 and (a)(6) claims for relief, as established by this Court's June 18, 2018 order granting in part and
19 denying in part Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint. RJN Exh. 5
20 (Order Granting in Part and Denying in Part Defendant's Motion to Dismiss and Order
21 Continuing Status Conference entered in this action on June 19, 2018).

22 During the pendency of this matter, Defendant appealed the State Court judgment. On
23 December 10, 2018, the California Court of Appeal dismissed his appeal as untimely, and held
24 that Defendant was barred from filing another appeal. RJN Exh. 6 (Decision of the California
25 Court of Appeal in the State Court Case).

26 Following the ruling of the Court of Appeal, Defendant filed a petition for review with the
27 California Supreme Court. On February 18, 2019 the California Supreme Court denied
28 Defendant's petition for review. RJN Exh. 7 (Order of the California Supreme Court in the State
Court Case). On March 4, 2019 the California Court of Appeal issued a remittitur certifying that

1 the decision entered in the State Court Case is final. RJN Exh. 8 (Remittitur of the California
2 Court of Appeal in the State Court Case).

3 **III. ARGUMENT**

4 ***A. Issue preclusion (collateral estoppel) prevents reconsideration of the issues***
5 ***decided by the State Court and conclusively establishes the validity of Plaintiffs’***
6 ***claims in this action and bars Defendant’s motion for summary judgment.***

7 A prior state court judgment has issue preclusive effect in dischargeability proceedings.
8 *Grogan v. Garner*, 498 U.S. 279, 284–85 & n. 11, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)
9 (holding that the doctrine of issue preclusion applies in bankruptcy court actions seeking to
10 except debts from discharge); *Bugna v. McArthur (In re Bugna)*, 33 F.3d 1054, 1056 (9th
11 Cir.1994); see also *In re Khaligh*, 338 B.R. 817, 832 (9th Cir. BAP 2006).

12 So long as a creditor demonstrates that the elements of issue preclusion are satisfied, the
13 bankruptcy court must apply collateral estoppel on an issue fully and fairly litigated in another
14 court. *In re Bugna*, 33 F.3d at 1057-58. In this case, the State Court Judgment has issue
15 preclusive effect. The elements of the Plaintiffs’ claims in this case are all conclusively
16 established by that Judgment. As a result, the claims may not be relitigated, and the Court must
17 deny Defendant’s motion for summary judgment, and instead enter judgment in favor of the
18 Plaintiffs on those claims as demonstrated in the Plaintiffs’ motion for summary judgment. .

19 ***B. California’s law of collateral estoppel applies in this case to give issue***
20 ***preclusive effect to the State Court Judgment, establishing the elements of the***
21 ***Plaintiffs’ nondischargeability claims***

22 In determining the collateral estoppel effect of a state court judgment, federal courts apply
23 that state’s law of collateral estoppel.” *Id.* at 1057; *Migra v. Warren City School Dist. Bd. of*
24 *Educ.*, 465 U.S. 75 (1984) (Federal courts “must give to a state-court judgment the same
25 preclusive effect as would be given that judgment under the law of the state in which the
26 judgment was rendered.”); *Nourbakhsh*, 67 F.3d , 798, 800 (9th Cir. 1995) (*citing Marrese v. Am.*
27 *Academy of Orthopaedic Surgeons*, 470 U.S. 373 (1985) and 28 U.S.C. § 1738, the Full Faith and
28 Credit statute).

29 Under California collateral estoppel law, the State Court Judgment has collateral estoppel
30 effect with respect to the Plaintiffs’ nondischargeability claims in this case. Specifically its
31 rulings in favor of the Plaintiffs on their fraud claims in the State Court Case establish each

1 element of the nondischargeability claims in this case. As a result, summary judgment in favor of
2 the Plaintiffs is appropriate on the nondischargeability claims.

3 Under California law, the application of collateral estoppel requires that:

- 4 (1) The issue sought to be precluded from relitigation must be
identical to that decided in a former proceeding;
- 5 (2) The issue must have been actually litigated in the former
6 proceeding;
- 7 (3) It must have been necessarily decided in the former proceeding;
- 8 (4) The decision in the former proceeding must be final and on the
merits; and
- 9 (5) The party against whom preclusion is sought must be the same
as, or in privity with, the party to the former proceeding.

10 *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1320 (9th Cir.1992); *In re Kelly*, 182 B.R. 255,
11 258 (9th Cir. BAP 1995), *aff'd*, 100 F.3d 110 (9th Cir.1996); *see also Lucido v. Superior Court*, 51
12 Cal.3d 335, 341 (1990), *cert. denied*, 500 U.S. 920, 111 S.Ct. 2021, 114 L.Ed.2d 107 (1991). If
13 these elements are satisfied, the first judgment “operates as an estoppel or conclusive adjudication
14 as to such issues in the second action as were actually litigated and determined in the first action.”
15 *Todhunter v. Smith*, 219 C. 690, 695 (1934)

16 Each of these elements is satisfied in this case with respect to both the Plaintiffs’ §
17 523(a)(2)(A) and the § 523(a)(6) claims asserted in this case.

18 There is no doubt that the elements of the fraud claims were actually litigated and
19 necessarily decided in the State Case, as those claims were tried to judgment. SD at 8:7-12. “The
20 Restatement Second of Judgments provides: ‘When an issue of fact or law is actually litigated and
21 determined by a valid and final judgment, and the determination is essential to the judgment, the
22 determination is conclusive in a subsequent action between the parties, whether on the same or a
23 different claim.’ (Rest.2d Judgments, § 27, p. 250.)” (*Barker v. Hull*, 191 Cal.App.3d 221, 226
24 (1987), *quoting* Rest.2d, Judgments § 27, Comment d. As a result, the second and third elements
25 of collateral estoppel are satisfied.

26 Also, the State Court Judgment is final and free from further review, as defendant has
27 exhausted his appeals. “For purposes of collateral estoppel, a judgment free from direct attack is a
28 final judgment.” *Mueller v. J. C. Penney Co.* 173 Cal.App.3d 713, 719 (1985). Indeed, following

1 the California Court of Appeals' dismissal of defendant's appeal, and the California Supreme
2 Court's denial of his petition for review, the remittitur of the Court of Appeal vested finality to
3 the State Court Judgment. *Gallenkamp v. Superior Court*, 221 Cal.App.3d 1, 10 (1990); *see* RJN
4 Exhs. 6-8. As a result, the fourth element of collateral estoppel is satisfied.

5 There is also no doubt that the same parties are involved in both proceedings; the plaintiffs
6 and the defendant in this case are identical to the parties, and in the same posture, as in the State
7 Case. As a result, the fifth element of collateral estoppel is satisfied.

8 Thus, the second through fifth elements of collateral estoppel are satisfied. As discussed in
9 detail in below, the first element of collateral estoppel is also met, as each element of the
10 Plaintiffs' § 523(a)(2)(A) and the § 523(a)(6) claims was decided in the State Court Judgment's
11 ruling on the Plaintiffs' causes of action for intentional fraud and deceit and for negligent
12 misrepresentation.

13 ***C. The elements of the Plaintiffs' § 523(a)(2)(A) claim are all decided in the
State Court Judgment***

14 A judgment which finds that the elements of fraud under California law exist also
15 establishes that elements of nondischargeable fraud in bankruptcy under § 523(a)(2)(A) exist,
16 because the elements of California civil fraud are identical to the essential elements of
17 nondischargeable fraud in bankruptcy under § 523(a)(2)(A). *In re Franklin*, 179 B.R. 913, 928
18 (Bankr. E.D. Cal. 1995).

19 To establish that a debt is nondischargeable, plaintiffs must show that (1) the debtor made
20 the representations; (2) at the time he knew they were false; (3) he made them with the intention
21 and purpose of deceiving the creditor; (4) the creditor relied on such representations; and (5) the
22 creditor sustained alleged loss and damage as the proximate result of such representations. *In re*
23 *Diamond*, 285 F.3d 822 (9th Cir.2002). These elements "mirror the elements of common law
24 fraud" and match those for actual fraud under California law, which requires that plaintiffs show:
25 (1) misrepresentation; (2) knowledge of the falsity of the representation; (3) intent to induce
26 reliance; (4) justifiable reliance; and (5) damages.² *In re Jogert, Inc.*, 950 F.2d 1498, 1504 (9th

27 ² Under California law, the elements of promissory fraud are identical to the elements of common
28 law fraud. *Service by Medallion, Inc. v. Clorox Co.*, 44 Cal.App.4th 1807, 1816 (1996).

1 Cir.1991) (*quoting Stewart v. Ragland*, 934 F.2d 1033, 1043 (9th Cir.1991)); *see also Younie v.*
2 *Gonya (In re Younie)*, 211 B.R. 367, 373–74 (9th Cir. BAP 1997), *aff'd*, 163 F.3d 609 (9th
3 Cir.1998) (table decision).

4 The State Court Judgment ruled in favor of plaintiffs on each of the elements of their fraud
5 claims, finding in their favor on each of the elements of their claim for Intentional Fraud and
6 Deceit as follows:

7 Intentional Fraud and Deceit

8 The elements of fraud are “(a) misrepresentation (false
9 representation, concealment, or nondisclosure); (b) knowledge of
10 falsity (or “scienter”); (c) intent to defraud, i.e., to induce reliance;
11 (d) justifiable reliance; and (e) resulting damage.” 9 Witkin Sum.
12 Cal. Law Torts § 772. “It is not essential to liability for fraud that
13 the person charged should have received any benefit.” *Ibid*.

14 All of the elements of fraud are present in this case. Defendant
15 Chan knowingly misrepresented his background and experience in
16 developing and managing Chinese real estate in the PPM. He did
17 this to induce Plaintiffs’ reliance on his expertise so that they would
18 invest in Dragonwood. Plaintiffs’ reliance was actual and justified.
19 They have also suffered resulting damage through the loss of the
20 money they invested. Defendant Chan's fraudulent conduct and
21 intentional concealment also occurred with respect to the
22 commingling of funds detailed above. The Dragonwood Operating
23 Agreement represented that the funds invested with the company
24 would not be commingled with the manager's personal assets and
25 that the funds and assets of the company would not be employed in
26 any manner except for the exclusive benefit of the company. These
27 representations were also knowingly false as evidenced by
28 Defendant Chan's commingling of investor funds with his personal
accounts and his holding title to the units in his name and his wife's
name, both of which occurred almost immediately after the
Plaintiffs made their investment. Evidence of his fraudulent intent
is also clear in his destruction of all written records regarding the
purchase and build-out of the units, as well as his failure to disclose
that he had left the company in 2008 and moved back to the United
States, thereby essentially abandoning these investment properties.

RJN Exh. 1 (SD at 8:14-9:15). In short, the State Court Judgment decides, in Plaintiffs’ favor that
there was, by Defendant: “(a) misrepresentation (false representation, concealment, or
nondisclosure); (b) knowledge of falsity (or “scienter”); (c) intent to defraud, i.e., to induce
reliance; (d) justifiable reliance; and (e) resulting damage,” which constitute each of the elements
each of the elements that establish a debt is nondischargeable: (1) the debtor made the
representations; (2) at the time he knew they were false; (3) he made them with the intention and

1 purpose of deceiving the creditor; (4) the creditor relied on such representations; and (5) the
2 creditor sustained alleged loss and damage as the proximate result of such representations.³ *In re*
3 *Diamond*, 285 F.3d at 827.

4 In sum, the superior court's final judgment expressly and in detail decides each of the
5 elements of actual fraud under California law, which necessarily decides the identical elements of
6 nondischargeable fraud in bankruptcy under § 523(a)(2)(A). The elements of Plaintiffs' §
7 523(a)(2)(A) claim are therefore established and may not be relitigated, and judgment in favor of
8 Plaintiffs on that claim is proper as a matter of law.

9 ***D. The elements of the Plaintiffs' § 523(a)(6) claim are also decided in the State
Court Judgment because it awards punitive damages for fraud***

10 The State Court Judgment also establishes the elements of nondischargeability under §
11 523(a)(6) because it awards the Plaintiffs punitive damages. The elements of nondischargeability
12 under § 523(a)(6) elements are: (1) a wrongful act, (2) done intentionally, (3) which necessarily
13 causes injury, and (4) is done without just cause or excuse. *In re Cecchini*, 780 F.2d 1440 (9th
14 Cir.1986). This definition does not require malice or a showing of an intent to injure, but rather it
15 requires only an intentional act which causes injury. *In re Bammer*, 131 F.3d 788, 791 (9th
16 Cir.1997).

17 An award by a California court of punitive damages for fraud necessarily includes a finding
18 of malice and thus satisfies that element under § 523(a)(6). *In re Molina*, 228 B.R. 248, 251–52
19 (B.A.P. 9th Cir. 1998). That is because under Cal.Civ.Code § 3294 intent to injure is a
20 prerequisite to such an award. Cal.Civ.Code § 3294 provides in relevant part as follows:

21 (a) In an action for the breach of an obligation not arising from
22 contract, where it is proven by clear and convincing evidence that
23 the defendant has been guilty of oppression, fraud, or malice, the
plaintiff, in addition to the actual damages, may recover damages
for the sake of example and by way of punishing the defendant.

24

(c) As used in this section, the following definitions shall apply:

25

26
27 ³ The element of damages is established, of course, because the superior court granted the
28 Plaintiffs damages. RJN Exh. 1 (SD at 14:5-10); RJN Exh. 4 (State Court Judgment at 2:8-17 and
17:5-10).

1 (3) 'Fraud' means an intentional misrepresentation, deceit, or
2 concealment of a material fact known to the defendant with the
3 intention on the part of the defendant of thereby depriving a person
4 of property or legal rights or otherwise causing injury.

5 Thus, an award of punitive damages under Cal.Civ.Code § 3294 establishes three of the
6 four elements of nondischargeability under § 523(a)(6): a wrongful act, done intentionally, and
7 intended to injure. *In re Molina*, 228 B.R. at 251–52.

8 Thus, in this case, the superior court's finding that Plaintiffs were entitled to punitive
9 damages established that Defendant engaged in: a wrongful act, done intentionally, and intended
10 to injure.⁴ RJN Exh. 1 (SD 17:17-18); RJN Exh. 4 (State Court Judgment at 2:15-17). The
11 superior court's award of damages to the Plaintiffs established the fourth element of Plaintiffs' §
12 523(a)(6) claim. RJN Exh. 1 (SD at 14:5-10); RJN Exh. 4 (State Court Judgment at 2:8-17 and
13 17:5-10). Thus, the State Court Judgment established each of the elements of nondischargeability
14 under § 523(a)(6). Its findings have collateral estoppel in this case and are binding, and as a result
15 judgment in favor of Plaintiffs on this claim too, is proper as a matter of law.

16 ***E. This Court may not sidestep collateral estoppel by reviewing the issues***
17 ***conclusively decided by the final State Court judgment as though it were a court of***
18 ***appeal.***

19 In his motion, Defendant invites this Court to review the rulings of the State Court as a
20 court of appeal. However, the Court has no jurisdiction to do so. To the contrary, under the
21 Rooker-Feldman doctrine, this court has no authority to review the final determinations of a state
22 court in judicial proceedings.⁵ *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir.
23 1986); *District of Columbia Court of Appeals v. Feldman*, 103 S. Ct. 1303, 1311, 460 U.S. 462,
24 476 (1983); see also *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 90 S. Ct. 1739, 1748,

25 ⁴ The superior court ruled in its Statement of Decision that the Plaintiffs were entitled to punitive
26 damages, but left the amount to be determined at a later phase of the case. The amount was
27 ultimately decided by stipulation between the Plaintiffs and the Chapter 7 Trustee.

28 ⁵ Original and exclusive jurisdiction of all cases under Title 11 of the United States Code (i.e., all
bankruptcy cases) (28 USC § 1334(a)); and original, but not exclusive, jurisdiction of all civil
proceedings arising under Title 11, or arising in or related to cases under Title 11 (28 USC §
1334(b)). Additionally, the district court in which a case under Title 11 is commenced has
exclusive jurisdiction of all of the property, wherever located, of the debtor as of the
commencement of the case, and of property of the estate (28 USC § 1334(e)(1)); and exclusive
jurisdiction over all claims or causes of action that involve employment of professionals under 11
USC § 327 and disclosure requirements thereunder (28 USC § 1334(e)(2)).

1 398 U.S. 281, 296 (1970) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). As
2 discussed above, the State Court Judgment is final, as Defendant unsuccessfully exhausted all
3 appellate review of that judgment. Thus, this Court may not re-examine it.

4 As a result, for this reason too, in addition to its being binding by the doctrine of collateral
5 estoppel, this Court may not review, re-examine, re-consider the State Court Judgment. Indeed,
6 this Court may not (as Defendant improperly appears to be inviting it to do) sidestep the doctrine
7 of collateral estoppel.

8 ***F. Defendant's motion is not a motion for summary judgment because it asks
the Court to adjudicate matters which were disputed in the State Court trial.***

9 A motion for summary judgment provides a procedure for terminating without trial actions
10 in which "there is no genuine dispute as to any material fact and the movant is entitled to
11 judgment as a matter of law." FRCP 56(a). Of course, in this case there is no genuine dispute as
12 to any material fact because they are all established by collateral estoppel. Defendant, instead,
13 asks the Court to review and adjudicate conflicting and contested testimony at trial. That is not
14 the purpose of a motion for summary judgment. It would instead be effectively a trial on the
15 papers. However, the Court may not re-try this case, or reconsider the issue or underlying
16 evidence, because they are conclusively established by collateral estoppel as discussed above.

17 **IV. CONCLUSION**

18 For the reasons set forth above the Court should deny defendant's motion for summary
19 judgment. First, the claims in this case are conclusively established by collateral estoppel, and
20 therefore may not be re-adjudicated. Moreover, even if this Court could re-adjudicate those
21 claims, it has no authority to re-examine the State Court's final judgment or try the facts of the
22 case on a motion such as this.

23 The Court should therefore deny Defendant's motion for summary judgment, and instead
24 grant the Plaintiffs' motion for summary judgment, and enter judgment in their favor on their
25 claims in this case.

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27 Dated: April 19, 2019

Ramsey Law Group

28 /s/ Hussein Saffouri

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Dated: April 19, 2019

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